

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Marc-Nus Charles)	File No.: EB-FIELDSCR-12-00003739
)	NAL/Acct. No.: 201432600004
Pompano Beach, Florida)	FRN: 0019116912

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 2, 2014

Released: June 2, 2014

By the Resident Agent, Miami Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. We propose a penalty of \$20,000 against Marc-Nus Charles for apparently operating an unlicensed FM radio station in Pompano Beach, Florida. The Commission warned Mr. Charles in writing that unlicensed radio operations violate federal law, but he nevertheless continued to operate illegally. The fact that Mr. Charles would ignore the Commission's warnings demonstrates a deliberate disregard for the Commission's authority and its rules, warranting a significant increase to our normal penalty for unlicensed radio operations.

2. In this Notice of Apparent Liability for Forfeiture (*NAL*), we find that Mr. Charles apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ by operating an unlicensed radio transmitter on the frequency 92.5 MHz in Pompano Beach, Florida.

II. BACKGROUND

3. Mr. Charles has a history of operating an unlicensed FM radio station in Pompano Beach, Florida. On August 4 and 5, 2009, Mr. Charles operated an unlicensed FM station on the frequency 95.9 MHz in Pompano Beach, Florida.² Mr. Charles received a written warning, which stated that operation of an unlicensed FM radio station violated the Act, must cease immediately, and could subject the operator to significant forfeitures.³ Local law enforcement subsequently seized the radio equipment used by Mr. Charles to operate the unlicensed FM station on 95.9 MHz pursuant to Florida law and shut down the station.

4. On June 18 and June 27, 2013, agents from the Enforcement Bureau's Miami Office (Miami Office) located the source of radio frequency transmissions on the frequency 92.5 MHz to an FM transmitting antenna located at a multi-family residence in Pompano Beach, Florida. The agents traced a coaxial cable from the antenna into Apartment #1 of the residence. Each day, the agents took field strength measurements of the station's signal and determined that it exceeded the limits for operation under Part 15 of the Commission's rules (Rules)⁴ and therefore required a license. According to Commission records, no

¹ 47 U.S.C. § 301.

² See *Marcnus Kesnel Charles*, Notice of Unlicensed Operation, Document No. W200932600066 (Enf. Bur. Sept. 11, 2009) (on file in EB-FIELDSCR-12-00003739). "Marc-nus Charles" and "Marc-nus Kesnel Charles" are two of the many name variations associated with Mr. Charles. His Florida driver's license, however, lists his legal name as "Marc-Nus Charles."

³ *Id.* Mr. Charles failed to respond to the 2009 written warning.

⁴ Part 15 of the Rules sets out the conditions and technical requirements under which certain radio transmission
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authorization had been issued to Mr. Charles, or to anyone else, for the operation of an FM broadcast station at or near the multi-family residence.

5. On June 18, 2013, agents from the Miami Office spoke to Mr. Charles at the residence. Mr. Charles told the agents that he did not live in Apartment #1, but that someone named “Henry Michael” lived there and operated the unlicensed radio station. Mr. Charles agreed to sign for a written warning addressed to Henry Michael, which stated that operation of an unlicensed FM radio station violates the Act, must cease immediately, and could subject the operator to significant forfeitures. Further investigation determined that Mr. Charles’s driver’s license and vehicle registration list Apartment #1 of the multi-family residence as his address. The owner of the multi-family residence also stated that the owner of Mr. Charles’s vehicle, whom he knew as “Henry Michelle,” and who matched Mr. Charles’s physical description, leased Apartment #1.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁵ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁶ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁷ and the Commission has so interpreted the term in the Section 503(b) context.⁸ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.⁹ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁰

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devices may be used without a license. In relevant part, Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239.

⁵ 47 U.S.C. § 503(b).

⁶ 47 U.S.C. § 312(f)(1).

⁷ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”).

⁸ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

⁹ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁰ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

A. Unlicensed Broadcast Operations

7. We find that the evidence in this case is sufficient to establish that Mr. Charles violated Section 301 of the Act. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license granted under the provisions of the Act.¹¹ On June 18 and June 27, 2013, agents from the Miami Office determined that an unlicensed radio station on the frequency 92.5 MHz operated from Apartment #1. Mr. Charles stated that “Henry Michael” resided in Apartment 1 and operated the unlicensed station. However, the building owner stated that a man matching Mr. Charles’s description, who he knew as “Henry Michelle,” rented Apartment #1 and Mr. Charles listed Apartment #1 as his residence on his driver’s license and vehicle registration. Mr. Charles also previously operated an unlicensed FM radio station in Pompano Beach, Florida. Based on the totality of the evidence, we conclude that Mr. Charles is “Henry Michael” aka “Henry Michelle” and operated the unlicensed station from Apartment #1.¹² A review of the Commission’s records revealed that no license or authorization was issued to Mr. Charles, or to anyone else, to operate a radio station on 92.5 MHz at this location. As a result, we find that Mr. Charles apparently willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization on June 18 and June 27, 2013.

B. Proposed Forfeiture

8. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.¹³ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁴ In doing so, we find that the violation in this case justifies a \$10,000 upward adjustment from the base forfeiture amount.¹⁵ As the record reflects, Mr. Charles received two written warnings that unlicensed radio operations violated the Act and could subject the operator to significant forfeitures.¹⁶ Despite these warnings, Mr. Charles operated an unlicensed FM radio station from

¹¹ 47 U.S.C. § 301.

¹² We note that the use of the word “operate” in Section 301 captures not just the “actual, mechanical manipulation of radio apparatus,” but also operation of a radio station generally. *Campbell v. United States*, 167 F.2d 451, 453 (5th Cir. 1948) (comparing the use of the words “operate” and “operation” in Sections 301, 307, and 318 of the Act, and concluding that the word “operate” as used in Section 301 of the Act means both the technical operation of the station as well as the general conduct or management of the station).

¹³ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ *See, e.g., Whisler Fleurinor*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 2478 (Enf. Bur. 2011) (proposing \$20,000 forfeiture for repeat unlicensed operations in violation of Section 301 of the Act after receiving two written warnings), *aff’d*, Forfeiture Order, 26 FCC Rcd 14437 (Enf. Bur. 2011); *Nounone Lubin*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 12654 (Enf. Bur. 2010) (proposing \$20,000 forfeiture for repeat violation of Section 301 after receiving two written warnings), *aff’d*, Forfeiture Order, 26 FCC Rcd 7758 (Enf. Bur. 2011).

¹⁶ *See supra* note 2 and para. 5. The fact that Mr. Charles agreed to sign for the written warning addressed to his assumed name Henry Michael does not reduce his apparent liability for the proposed forfeiture. *See, e.g., Jean Richard Salvador*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 2976 (Enf. Bur. 2014) (proposing forfeiture against an individual that claimed his “friend” operated an unlicensed radio station when evidence indicated that the individual exercised actual control over the station).

Apartment #1 on June 18 and June 27, 2013. The fact that Mr. Charles would commit the same violation multiple times after being warned repeatedly that such actions violate the Act, demonstrates not only the egregiousness of the violations, but also his deliberate disregard for the Act and the Commission's authority. Accordingly, applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Charles is apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000).

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Rules, Marc-Nus Charles is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of Section 301 of the Act.¹⁷

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Marc-Nus Charles **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Marc-Nus Charles shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁸ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

12. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁹ If you have questions regarding payment

¹⁷ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

¹⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁹ See 47 C.F.R. § 1.1914.

procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁰ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, Miami Office, P.O. Box 520617, Miami, FL 33152-0617, and include the NAL/Acct. No. referenced in the caption. Marc-nus Charles also shall e-mail the written response to SCR-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to Marc-Nus Charles at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Stephanie Dabkowski
Resident Agent
Miami Office
South Central Region
Enforcement Bureau

²⁰ 47 C.F.R. §§ 1.16, 1.80(f)(3).